

UNITHERM FOOD SYSTEMS, INC.,
a Illinois corporation; AND
JENNIE-O FOODS, INC.,
a Minnesota corporation,

Plaintiffs,

v.

SWIFT-ECKRICH, INC. d/b/a
CONAGRA REFRIGERATED FOODS,
a Delaware corporation,

Defendant.

SWIFT-ECKRICH, INC. d/b/a
CONAGRA REFRIGERATED FOODS,
a Delaware corporation,

Defendant.

[illegible]

1. I am the President and custodian of the records of Plaintiff, Unitherm Food Systems, Inc. ("Unitherm"). This Amended Affidavit is intended to supplement my earlier affidavit which was attached as App. E to Plaintiffs' Motion for Partial Summary Judgment Regarding Patent Invalidity and Unenforceability, and Brief in Support filed on April 19, 2002. The matters in this affidavit are based upon my personal knowledge and upon my review of Unitherm documents, videotapes and records. Exhibits 2, 3, 4A, 4B, 6, 11, 17-19, 21-22, 24-31, 34-41, 42A-J, 43A-C, 45-61, 66-67 and 71-76 (attached to my original Affidavit filed on April 19, 2002) are kept in the ordinary course of business and it was the regular course of business for a Unitherm employee or representative, with knowledge of the act, event, condition, opinion, recorded, to make the records or to transmit information thereof to be

included in such records. These records were made at or near the time or reasonably soon thereafter. The records attached to my original Affidavit are the original or exact duplicates. If called as a witness at the trial of this matter, I could and would testify competently to the matters stated herein.

2. Appended as Exhibits 1A-E to my original Affidavit are clips from Unitherm Video U-06506 (Ex. 80). I was present when the video was filmed for Unitherm and testify that the video is an accurate reflection of the demonstration and events that occurred on September 1, 1993. The video shows a demonstration of the Unitherm in-line browning/smoking process conducted for Rocco at Unitherm's facility in Elk Grove, Illinois on September 1, 1993. These skinless, pre-cooked, whole muscle turkey breasts were dipped in a MAILLOSE solution and, as shown in clips 1B-J, were then conveyed through a Unitherm RapidFlow oven to produce a light, golden brown color.
3. Exhibit 2, page U-05954 is a Unitherm data sheet for the September 1, 1993 demonstration wherein Test No. 5 corresponds to the single product shown in video clip 1A and Test No. 6 corresponds to the four products processed in clips 1B-H. Page U-05952 of Exhibit 2 is a September 15, 1993 data sheet recording five demonstrations for Rocco on pre-cooked, whole muscle, skin-on sweetheart turkey breasts which were "dipped" for one minute in MAILLOSE. Jim Hutchison recorded the September 1, 1993 data sheet immediately following the demonstration. Jim Hutchison also recorded the September 15, 1993 data sheet immediately following each of the demonstrations. I have personal knowledge of these demonstrations because I was present at the demonstrations. The regular duties of myself, Jim Hutchison and/or Amanda Howard included recording these demonstrations and

such records are ordinarily made when these demonstrations are conducted. The data sheets were developed to aid in the recording of demonstrations undertaken in the RapidFlow oven. The data sheet is customized to reflect the 3 zone RapidFlow oven in Elk Grove.

There are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example, I would remove a whole muscle cooked turkey from its barrier bag and place it on the scale. Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. He would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infeed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by a stop watch to confirm the Hertz setting to be accurate. This is seen on the data sheet as Belt Speed followed by cook time. At the exit we would make a comment on what we felt the product looked like. This is noted under "remarks" on the test data shelf. When a customer was present, then his or her opinion was recorded as a preference.

Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically three repetitions would be run.

4. Exhibit 1F is another clip from the September 1, 1993 video also showing golden brown pre-cooked, whole muscle, MAILLOSE-dipped hams that were run for Bilmar Foods.
5. Exhibit 3 is a sales proposal mailed to Rocco on September 23, 1993. Jim Hutchison drafted this sales proposal immediately following a discussion between he and Dan Benson or Calvin Ferrell of Rocco, where Hutchison attempted to sell Rocco a Browning Process using a RapidFlow oven and an atomizer. The purpose of this proposal was to make a record of this discussion which occurred on or near the same time period. Hutchison, a broker/agent of Unitherm regularly wrote such follow-up proposals to record the details of his regular sales discussions and work for Unitherm.
6. Exhibits 4A and B are facsimile transmissions dated October 14, 1993 to Rocco regarding demonstration data for 10/14/1993 and having October 14, 1993 Unitherm trial data sheets for Rocco turkey breasts attached thereto. Jim Hutchison and I recorded the demonstration data and data sheets immediately following demonstrations on October 14, 1993. I had personal knowledge of these demonstrations because I was present at the demonstrations. Some of Jim Hutchison's regular duties included recording these demonstrations and such records are ordinarily made when these demonstrations are conducted.

The data sheets were developed to aid in the recording of demonstrations undertaken in the RapidFlow oven. The data sheet is customized to reflect the 3 zone RapidFlow oven in Elk Grove.

There are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example, I would remove a whole muscle cooked turkey from its barrier bag and place it on the scale.

Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. He would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infeed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by a stop watch to confirm the Hertz setting to be accurate. This is seen on the data sheet as Belt Speed followed by cook time. At the exit point we would make a comment on what we felt the product looked like. This is noted under "remarks" on the test data shelf. When a customer was present, then his or her opinion was recorded as a preference.

Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically three repetitions would be run.

7. Exhibit 5 is a November 9, 1993 fax from Dan Benson of Rocco Foods sent to Jim Hutchison and me. The fax references an additional series of tests to be run at Unitherm. The fax was a response to my prior discussions, demonstrations and meetings with Rocco. I was present when these tests were subsequently conducted. In the ordinary course of business, I regularly retain and rely upon correspondence I receive from customers discussing potential testing with a Unitherm process.

8. Exhibit 6 is a November 19, 1993 letter from Unitherm to Paul Hockenhull of Hockenhull & Hayes.
9. Exhibit 7 is a November 20, 1996 letter from Ron Ratz of Red Arrow to Unitherm.
10. Exhibit 8 is a February 1, 1994 fax from Unitherm's distributor, Proctor & Schwartz (Proctor) to Ron Ratz.
11. Exhibit 9 is a December 29, 1996 memorandum Ron Ratz of Red Arrow sent inviting me to visit their facility in Chicago. In the ordinary course of business, I regularly retain such correspondence.
12. Exhibit 10 is a Unitherm Confidentiality Agreement which Ron Ratz refused to sign when visiting Unitherm's Ponca City facility in June of 1997. No one from Red Arrow signed a confidentiality agreement with Unitherm prior to the May 11, 1997 critical date of the '027 Patent.
13. Exhibit 11 consists of additional Unitherm trial data sheets for demonstrations conducted for Rocco on February 3, 1994. Jim Hutchison recorded these trial data sheets immediately following the demonstration. I had personal knowledge of these demonstrations because he was present at the demonstrations.

The data sheets were developed to aid in the recording of demonstrations undertaken in the RapidFlow oven. The data sheet is customized to reflect the three zone RapidFlow oven in Elk Grove.

As mentioned, there are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example, I would remove a whole muscle cooked turkey from its barrier bag and place it on

the scale. Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. He would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infeed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by the stop watch to confirm the Hertz setting to be accurate. This is seen on the data sheet as Belt Speed followed by cook time. At the exit point we would make a comment on what we felt the product looked like. This is noted under "Remarks" on the test data sheet. When a customer was present, then his or her opinion was recorded as a preference.

Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically 3 repetitions would be run.

14. Exhibits 1A-1I are clips of video Bates number U-06507 (Ex. 81) which contain demonstrations of the Unitherm in-line browning/smoking process. The video was professionally filmed on behalf of and for Unitherm and its distributor, Proctor & Swartz at Unitherm's former facility located in Elk Grove, Illinois, near Chicago's O'Hare Airport. Unitherm's test facility was located in Elk Grove from 1993 to about November, 1994. I was present when the video was filmed and the video is an accurate reflection of the events that

- occurred on or about September 14, 1993. Approximately 500 copies of this video were distributed throughout the industry from 1993 to 1995, primarily by mail and at trade shows.
15. Exhibit 13 is an October 26, 1993 letter to Unitherm from Proctor transmitting an invoice No. 930820 showing that video U-06507 (referred to hereinafter as "the Proctor/Unitherm video") was filmed on September 14, 1993 (see page U-06415).
 16. Exhibits 12B, E, F & G show that the process was performed in a Unitherm RapidFlow II convection oven. Exhibit 12C shows Jim Hutchison of Proctor and Ron Ratz of Red Arrow dipping a pre-cooked, whole muscle in a MAILLOSE solution. Exhibit 12D is a closeup showing two cartons of the MAILLOSE material used in the dipping procedure.
 17. Exhibit 12E depicts the dipped product being placed at the entrance of the RapidFlow II convection oven. Exhibit 12F depicts Ron Ratz spraying MAILLOSE solution on product as it passes from the first zone of the RapidFlow oven to the second zone. At this point in the video, the narrator notes that the addition of a spray station can be added between oven zones for smoking, flavoring, or enhancing product browning.
 18. Exhibit 12G shows an array of pre-cooked, whole muscle products having golden brown colors of various shades produced by the Unitherm process. The lower left hand item is a pre-cooked, whole muscle turkey breast which has been taken out of the cooking bag and washed and dried as were all of the other products, to remove purge and moisture but not dipped or browned. The other products are hams, and one turkey breast, having natural golden brown colors ranging from light to very dark. The lower middle product is a pre-cooked whole muscle ham prepared using MAILLOSE to match the appearance of the corresponding light oven-roasted ham product. The lower right hand product is a pre-cooked

whole muscle ham prepared using MAILLOSE to match a somewhat darker golden brown product. The upper right hand product is a pre-cooked whole muscle ham prepared using liquid smoke to match the appearance of the corresponding smoked ham product. The upper middle product is a pre-cooked, whole muscle ham prepared using MAILLOSE to match the appearance of the corresponding "Black Forest" oven-roasted ham product. The upper left hand product is a pre-cooked, whole muscle, skinless turkey breast prepared using liquid smoke to match the appearance of the corresponding skinless smoked turkey product.

19. Exhibits 14A-H are clips from a Unitherm promotional video (Exhibit 82, U-06510) pieced together by Unitherm from various videos filmed for Unitherm from 1992 to 1996. I was present at all of these filming sessions and the video is an accurate reflection of the events that I witnessed. The video includes relevant footage taken from the 1993 Proctor/Unitherm video and includes further video (Exhibits 14B-E) of a demonstration for Thorne Apple Valley performed at Unitherm's facility in Elk Grove in October of 1993 followed by video of a demonstration (Clips 14F-H) conducted in Elk Grove for Rocco in 1993. Unitherm left the Elk Grove facility in 1994. Approximately 500 copies of this and a very similar 1996 Unitherm promotional video (Appendix V to Plaintiff's Brief (Foster Farm's document FF665)) including all of this same footage were disseminated throughout the industry, without restriction, in 1996, primarily by mail and at trade shows.
20. At Unitherm's request, Thorne Apple Valley sent Unitherm, in October of 1993, some pre-cooked, whole muscle deli ham slicing logs for browning demonstrations. Clips 14B-E from the Unitherm promotional video show three of the pre-cooked, whole muscle products being dipped in a MAILLOSE solution and then conveyed through a Unitherm RapidFlow oven

for approximately 7.5 minutes. As shown, the resulting products had a dark golden brown color matching that of the corresponding naturally browned Thorne Apple product. The browned products were then returned to Thorne Apple along with a similarly browned pre-cooked, whole muscle turkey loaf.

21. Clips 14F-H show one and then six MAILLOSE dipped, pre-cooked whole muscle, skinless Rocco turkey breasts being delivered through the RapidFlow oven to produce a golden brown color.
22. Exhibits 15 and 16 are October 26, 1993 letters from Jim Hutchison transmitting copies of the Proctor/Unitherm video to Boars Head Provision Co. and Carolina Turkeys. In the ordinary course of business, Jim Hutchison, as a broker/agent for Unitherm, regularly sent product information to potential customers.
23. Exhibits 17 and 18 are November 9, 1993 letters transmitting copies of the Proctor/Unitherm video to Hester Industries and to Carolina Turkeys. In the ordinary course of business, Jim Hutchison sent these letters to provide information and follow-up recent business discussions with potential customers. Hutchison, as a broker/agent for Unitherm, regularly documented such discussions through follow-up correspondence.
24. Exhibit 19 is a December 1, 1993 letter from Jim Hutchison to House of Raeford transmitting a copy of the Proctor/Unitherm promotional video. In the ordinary course of business, Hutchison sent this letter to provide product information to a potential customer. As a broker/agent for Unitherm, Hutchison regularly sent this type of correspondence to potential customers.

25. Exhibit 20 is an October 19, 1993 letter Jim Hutchison sent to Steve Velesco, of Boar's Boar's Head Provision Co. to provide him with recent product information. In the ordinary course of business, Hutchison regularly sends such correspondence to potential customers.
26. Exhibit 21 consists of several letters transmitting copies of the 1996 Unitherm promotional videos from April through December of 1996. James Gaydusek, Jerry Adams, both past employees of Unitherm, and I drafted these letters to document the mailing of videos and promotional materials to potential buyers. We drafted these letters to record the fact that we had mailed these promotional materials to potential buyers. We had personal knowledge of the information included in these letters because we decided which buyers should receive the video. Our regular duties included drafting letters to document such actions.
27. Exhibit 22 is a Unitherm trial data sheet dated September 30, 1993. This data sheet represents demonstrations run by Unitherm for Dr. Syed Hussain of defendant Swift-Eckrich Inc. on whole muscle turkey breast products supplied by defendant. Jim Hutchison recorded this trial data sheet immediately following the demonstration performed for Dr. Hussain. I had personal knowledge of these demonstrations because I was present at the demonstrations. Jim Hutchison regular duties include recording these demonstrations and such records are ordinarily made when these demonstrations are conducted.

Once again, the data sheets were developed to aid in the recording of demonstrations undertaken in the RapidFlow oven. The data sheet is customized to reflect the three zone RapidFlow oven in Elk Grove.

There are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example,

I would remove a whole muscle cooked turkey from its barrier bag and place it on the scale. Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. He would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infeed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by a stop watch to confirm the Hertz setting to be accurate. This is seen on the data sheet as Belt Speed followed by cook time. At the exist we would make a comment on what we felt the product looked like. This is noted under "Remarks" on the test data sheet. When a customer was present, then his or her opinion was recorded as a preference.

Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically three repetitions would be run.

28. Exhibit 23 is a thank you note to me and my wife, Amanda Howard, from Syed Hussain dated October 1, 1993 (i.e., the day following the September 30, 1993 demonstration).
29. Exhibit 24 is an October 6, 1993 sales proposal presented to Dr. Hussain. Hutchison drafted this sales proposal immediately following a discussion between he, Hussain and myself where Hutchison attempted to sell Hussain a RapidFlow II oven. The purpose of this proposal was to make a record of this discussion which occurred on or about the same time.

Hutchison regularly wrote such follow-up proposals to record the details of his regular sales discussions.

30. Exhibit 25 is a fax transmittal of a Unitherm cooking data sheet dated October 14, 1993. Jim Hutchison and I recorded these test results immediately following the demonstration. I had personal knowledge of these demonstrations because I was present at the demonstrations. Our regular duties include recording these demonstrations and such records are ordinarily made when these demonstrations are conducted. The data sheets were developed to aid in the recording of demonstrations undertaken in the RapidFlow oven. The data sheet is customized to reflect the three zone RapidFlow oven in Elk Grove.

There are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example, I would remove a whole muscle cooked turkey from its barrier bag and place it on the scale. Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. He would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infeed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by a stop watch to confirm the Hertz setting to be accurate. This is seen on the data sheet as Belt Speed followed by cook time. At the exist we would make a comment on what we felt the product looked like. This is noted under "Remarks" on the test data sheet. When a customer was present, then his or her opinion was recorded as a preference.

Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically three repetitions would be run.

31. In selling the Unitherm in-line browning/smoking process to replace conventional batch smokehouse systems, the customers' existing smokehouse systems have, for health and bacteriological reasons, typically operated with product core temperatures of 40°F or less going into the smokehouse.
32. Exhibits 26-30 are: a quote sent to Thorne Apple July 24, 1995; a sales order for Thorne Apple dated 8/10/95; an order confirmation to Thorne Apple dated August 10, 1995; an invoice to Thorne Apple dated 19/27/95 [sic] (should be 9/27/95); and a letter to Thorne Apple dated January 15, 1996 wherein Unitherm offered to sell two additional systems. I drafted the sales quote, order confirmation, and January 15, 1996 letter. Ella Coffey drafted the sales order and invoice. We both regularly draft such documents in the course of the sales transaction as a duty of employment.
33. Exhibit 31 is a July 17, 1996 letter from Unitherm to Mr. Scott Christiansen of Jennie-O discussing the Unitherm browning/smoking process and system which was then in commercial operation at Thorne Apple. James Gaydusek, a former employee of Unitherm, drafted this letter, at my direction, following a discussion between he and Scott Christiansen, in which Gaydusek attempted to sell Christiansen equipment. The purpose of the proposal

was to make a record of this discussion which occurred on or near the same date. As a Unitherm employee, Gaydusek regularly wrote such follow-up proposals to record the details of his sales discussion.

34. Exhibit 23 is a December 10, 1993 letter from Proctor, Unitherm's broker/agent, to Syed Hussain of defendant, thanking him for confirming the contents and schedule of the seminar to be conducted by Unitherm for Hussain and his colleagues on January 11, 1994.
35. Exhibit 33 is a subsequent letter from Syed Hussain received by me and others listing individuals who would attend the seminar.
36. Exhibit 34 is a Unitherm trial data sheet showing demonstrations of the Unitherm browning/smoking process conducted for Carolina Turkeys on January 13, 1994. Jim Hutchison recorded the trial data immediately following the demonstration. I had personal knowledge of these demonstrations because he was present at the demonstrations. Our regular duties include recording these demonstrations and such records are ordinarily made when these demonstrations are conducted.

There are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example, I would remove a whole muscle cooked turkey from its barrier bag and place it on the scale. Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. He would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infeed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by a stop watch to confirm

the Hertz setting to be accurate. This is seen on the data sheet as Belt Speed followed by cook time. At the exist we would make a comment on what we felt the product looked like. This is noted under "Remarks" on the test data sheet. When a customer was present, then his or her opinion was recorded as a preference.

Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically three repetitions would be run.

37. Exhibit 35 is a January 27, 1994 sales proposal to Carolina Turkeys. Hutchison and I drafted this sales proposal immediately following a discussion with Carolina Turkeys, where we attempted to sell Carolina Turkeys a RapidFlow II oven. The purpose of the proposal was to make a record of this discussion which occurred on or near that time. In the ordinary course of business, Hutchison and I regularly write such follow-up correspondence.
38. Exhibit 36 is a February 18, 1994 sales proposal to Corfu Tasty Gyros. Hutchison and I drafted this sales proposal immediately following a discussion with Corfu Tasty Gyros, where [we] attempted to sell Corfu Tasty Gyros a RapidFlow II oven. The purpose of the proposal was to make a record of the discussion which occurred on or about February 18, 1994. Hutchison and I regularly wrote such follow-up proposals to record the details of these regular sales discussions.

39. Exhibit 37 is an August 18, 1995 letter and quote from Unitherm to Frank Hollendorfer House of Raeford. I drafted this sales proposal following a business discussion with Hollendorfer. The purpose of the proposal was to make a record of this discussion which occurred on or near the same time. I regularly wrote such follow-up proposals to record the details of these business discussions.
40. Exhibit 38 is an April 25, 1996 fax from Unitherm to Prem Singh transmitting drawings of the Unitherm system.
41. Exhibit 39 is a May 2, 1996 quote for the Unitherm system to Plantation Foods. I drafted this sales proposal immediately following a sales meeting I had with Plantation Foods in Ponca City. The purpose of the proposal was to make a record of this discussion. I regularly wrote such follow-up proposals to record the details of these sales discussions.
42. Exhibit 40 is a May 2, 1996 quote to Russer Foods for a Unitherm "processing line." I drafted this sales proposal immediately following a sales pitch I made to Russer Foods on or about the same time. The purpose of the proposal was to make a record of this discussion. I regularly wrote such follow-up proposals to record the details of these sales discussions.
43. Exhibit 41 is a draft of a quote for the Unitherm system to Bryan Foods. I drafted this sales proposal immediately following the sales presentation I made to Bryan Foods on or about the same time. The purpose of the proposal was to make a record of this discussion. I regularly wrote such follow-up proposals to record the details of these sales discussions.
44. Exhibits 42A-J are letters sent by Unitherm from May 21, 1996 through August 28, 1996 to Carolina Turkeys; Pilgrims Pride Corp.; Jennie-O; Farmland Foods, Inc.; Oscar Mayer; House of Raeford; Plantation Foods, defendant Swift-Eckrich, and Hudson Foods. Exhibits

42A-F are sales proposals drafted by Gaydusek to follow-up prior sales discussions with potential buyers. The purpose of the proposal was to make a record of these discussions. Gaydusek regularly wrote such follow-up proposals to record the details of his sales discussions. Gaydusek and I drafted the letters labeled Exhibits 42G-J as follow-up letters to record the details of these regular business discussions.

45. Exhibits 43A-C are quotes dated August 8, August 22 and August 23, 1996 from Unitherm to Plantation Foods, Jennie-O, and Cargill, Inc. Gaydusek drafted these quotes to follow-up prior business meetings or discussions. Gaydusek met with Plantation Foods in early August of 1996 and conducted business discussions with Jennie-O and Cargill at or about the same time. The purpose of these quotes was to make a record of such discussions and to follow-up with a written quote outlining details of the discussions.
46. Exhibits 44A-H are clips from Unitherm video Bates number U-06511 (Ex. 83), filmed on September 12, 1996. I was present when during the filming of this video for Unitherm and testify that the video is an accurate reflection of the events that occurred on September 12, 1996. This video shows demonstrations of the Unitherm system conducted for Hudson Foods. Clip 44A shows Hudson employee, Andrew Cobb. Clip 44B shows Mr. Cobb dipping pre-cooked, whole muscle turkey breasts in a MAILLOSE solution. Mr. Cobb is shown using a dipping technique wherein the breast is placed in the tub of MAILLOSE solution and the solution is also being splashed by hand onto the top of the product. Clip 44C shows these and four other dipped turkey breasts traveling on a conveyor toward the entrance of the Unitherm RapidFlow oven. Clip 44D shows that a single zone oven was used operating at a temperature of 350°C. Clip 44E shows the turkey breasts traveling through

the exit end of the oven. A comparison of times on the Exhibits indicates that the residence time of the product in the oven was in the neighborhood of 10 minutes. Clips 44F shows the resulting golden brown product.

47. Hudson Foods' liquid smoke supplier, Hickory Foods, witnessed demonstrations of the Unitherm process but did not execute any type of confidentiality agreement with Unitherm.
48. Exhibit 45 is an August 30, 1996 quote from Unitherm to Mr. Mike Bliss of defendant Swift-Eckrich. Gaydusek drafted this quote to Bliss immediately following a discussion between he and Bliss. The purpose of the proposal was to make a record of this discussion which occurred on or about the same time. Gaydusek regularly wrote such follow-up proposals to record the details of his sales discussions.
49. Exhibit 46 is a September 26, 1996 sales quote from Unitherm to Plantation Foods. I drafted this sales quote to Dick Taylor of Plantation Foods immediately following the meeting between he and Taylor. I drafted this proposal to make a record of this meeting which occurred on September 25, 1996. I regularly wrote such follow-up proposals to record the details of these sales meetings.
50. Exhibits 47 and 48 are substantially identical sales quotes dated October 10, 1996 and December 31, 1996 from Unitherm to Robert Neely of Wilson's Continental Deli Foods and Bob Wood of Jennie-O. I drafted these sales quotes immediately following business discussions I had with Neely and Wood to make a record of these discussions. The business discussion with Neely occurred September 30, 1996 and the discussion with Wood occurred the week prior to December 31, 1996. I or Jerry Adams, a Unitherm salesman, regularly wrote such follow up proposals to record the details of these sales meetings.

51. Exhibit 49 is a November 5, 1996 fax transmission from Jerry Adams of Unitherm to Foster Farms discussing the process results of demonstrations conducted for Foster Farms for smoked products. In the ordinary course of business Adams regularly corresponded with customers regarding product demonstrations. Adams had personal knowledge of the test results referenced in this letter because he was present at the testing.
52. Exhibit 50 is a November 14, 1996 quote from Unitherm to Tim McConnell of Foster Farms. Jerry Adams of Unitherm drafted these sales quotes to McConnell immediately following business discussions between he and McConnell. Adams drafted the quote to make a record of this discussion that occurred on or about November 13, 1996. Adams regularly wrote such follow-up quotes to record the details of his sales discussions.
53. Exhibit 51 is a November 21, 1996 letter from Unitherm to Eric Christiansen of defendant. Jerry Adams drafted these sales quotes to Christiansen immediately following a business discussion between he and Christiansen. Adams drafted the quote to make a record of the this discussion that occurred on or about the same time. Adams regularly wrote such follow-up quotes to record the details of his sales discussions.
54. Exhibit 52 is a quote from Unitherm to Troy Filts, Holtz Smith, and Charles Motley of Cargill. I drafted this sales quote immediately following business discussions I had with Troy Filts. I regularly wrote such follow-up quotes to record the details of sales discussions.
55. Exhibits 53 and 54 are substantially identical December 3, 1996 and December 26, 1996 letters from Unitherm to Bob Wood of Jennie-O and Kent Kring of defendant Swift-Eckrich transmitting yet more videos of the Unitherm in-line browning/smoking process. Jerry Adams drafted these sales quotes immediately following business discussions he had with

Wood and Kring. Adams drafted the quote to make a record of these business discussions that occurred on or about the same time. Adams regularly wrote such quotes to record the details of his sales discussions.

56. Exhibits 55 and 56 are December 19 and December 31 quotes from Unitherm to Frank Mello and John Reicks of Bryan Foods for the Unitherm browning processing line. I drafted these sales quotes immediately following a business discussion I had with Frank Mello. I drafted the quote to make a record of the business discussion that occurred on or about the same time. I regularly wrote such follow-up quotes to record the details of these sales discussions.
57. Exhibit 57 is a January 13, 1997 sales quote from Unitherm to Dennis Skou of International Trading Co. Adams drafted these sales quotes to Skou immediately following a business discussion between he and Skou. Adams drafted the quote to make a record of the business discussion that occurred on or about January 12, 1997. Adams regularly wrote such follow-up quotes to record the details of his sales discussions.
58. Exhibit 58 is a January 14, 1997 sales quote from Unitherm to Doug Crouser, Larry Von Tersch, and Scott Cusick of Farmland Foods for the Unitherm "in line smoking process." I drafted this sales quote immediately following a business discussion I had with Doug Crouser I drafted the quote to make a record of the business discussion that occurred on or about January 12, 1997. I regularly wrote such follow-up quotes to record the details of these sales discussions.
59. Exhibit 59 consists of identical fax transmissions sent to Prem Singh, Tom Dearing, Arnie Mikelberg, Eric Christiansen, Daryl Elston, Larry Raulie, Ronald Albrecht, and Syed Hussain of defendant, and to about 200 other individuals throughout the industry inviting them to

visit the Unitherm booth at an exposition. In the ordinary course of business, Unitherm regularly sends written invitations to potential customers to view products.

60. Exhibit 60 consists of Unitherm trial data sheets for demonstrations conducted February 7, 1997 on whole muscle, pre-cooked turkey breasts, provided by Perdue and Plainville, and hams provided by Continental Deli-Wilson. Jim Wade and Jerry Adams recorded these trial data sheets immediately following a demonstration. I had personal knowledge of these demonstrations because I was present at the demonstrations. Jim Wade and Jerry Adams regular duties included recording these demonstrations and such records are ordinarily made when these demonstrations are conducted.

The data sheets were developed to aid in the recording of demonstrations undertaken in the RapidFlow oven. The data sheet is customized to reflect three zone RapidFlow oven in Elk Grove.

There are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example, I would remove a whole muscle cooked turkey from its barrier bag and place it on the scale. Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. I would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infeed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by a stop watch to confirm the Hertz setting to be accurate. This is seen on the data sheet as Belt Speed followed by cook time. At the exist we would make a comment on what we felt the product looked like.

This is noted under "Remarks" on the test data sheet. When a customer was present, then his or her opinion was recorded as a preference.

Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically three repetitions would be run.

61. Exhibit 61 is a February 12, 1997 sales quote from Unitherm to Roger Lipinski of Perdue Farms, Inc. for the Unitherm "In-line Smoking Process." I drafted this sales quote immediately following a business discussion I had with Roger. I drafted the quote to make a record of the business discussion that occurred on or about the same time and I regularly wrote such follow-up quotes.
62. Exhibit 62 is a February 7, 1997 purchase order for the Unitherm in-line browning/smoking system from Plantation. Purchase orders from customers are received and maintained by Unitherm employees as a normal part of the sales process.
63. Exhibit 63 is an advertisement placed by Unitherm in the April 1997 issue of *Frozen Foods International*.
64. Exhibit 64 is an April 1, 1997 sales quote Jerry Adams wrote and sent to John Jetton of Foster Farms immediately following a business discussion he had with Jetton. Exhibit 65 is an April 10, 1997 follow-up letter I wrote to Jetton immediately following a business discussion I had with Jetton. Both of these letters were written to record prior discussions.

We regularly write such follow-up correspondence to record the details of business discussions.

65. Exhibits 66 and 67 are April 21, 1997 letters I sent to Mr. Rod Liddle and Mr. Dennis DesLauriers of defendant, with copies to J.B. Weatherspoon, informing them that Unitherm has already sold its process to four other companies. In the ordinary course of business, upon the sale of a Unitherm process, I regularly notify other potential customers of these process sales.
66. Exhibits 68 and 69 are a May 5, 1997 revised purchase order from Foster Farms and corresponding revised Unitherm sales order forms and a Foster Farms check. Purchase orders from customers are received and maintained by Unitherm employees as a normal part of the sales process. The corresponding Unitherm forms are documents we produce and maintain during the course of a sale.
67. Exhibits 70A-I are clips from Unitherm video Bates No. U-06509 (Ex. 84), showing the demonstration of the Unitherm in-line smoking/browning system conducted for Prem Singh and Chris Salm of defendant on February 24, 1998. This demonstration was run at Unitherm's Ponca City facility using a Unitherm in-line browning/smoking system which had been ordered by and constructed for another customer to perform the same browning process on skinless, whole muscle pre-cooked turkey breasts. Clip 70A shows Chris Salm removing pre-cooked, whole muscle turkey breasts from their cooking bags. Clip 70B shows Prem Singh. Clip 70C shows the product being conveyed through the Unitherm infrared grill unit for removal of purge and drying. Clip 70D shows the dried product exiting the infrared unit. Clip 70E shows the dried product being dipped in MAILLOSE solution using the same

splashing technique shown in the Hudson Video. Clip 70F shows the dipped product entering the Unitherm RapidFlow oven. Clip 70G shows the Unitherm liquid drench system which was part of this Unitherm line but was not used for these runs because of the larger volume of MAILLOSE solution required to fill and operate the automatic drench, as opposed to simply dipping in a tub. Clip 70H shows the turkey breast product exiting the oven approximately 10 minutes after entering. Clip 70I again shows the turkey breast product exiting the oven and also shows Prem Singh passing in front of the camera. As Mr. Singh moves into the picture, he can be heard to say that "It looks nice."

68. Exhibit 71 is the proposal for the Unitherm "browning/smoking line" which was handed to Prem Singh and Chris Salm as they left Unitherm's facility on February 24, 1998. I drafted this sales proposal the same day that I met with Singh and Salm. I draft these quotes to make records of these business meetings. I had personal knowledge of these meetings because I was present at the meetings. I regularly wrote such follow-up proposals to record the details of sales discussions.
69. Exhibit 72 is a December 31, 1997 sales proposal from Unitherm to Calvin Ferrell of Perdue Farms, Inc. I drafted this sales proposal following a business discussion I had with Ferrell. I drafted the quote to make a record of the business discussion that occurred on or about December 31. I regularly wrote such follow-up quotes to record the details of these sales discussions. The Perdue proposal predates and, except for equipment sizes and costs, is essentially identical to the proposal later prepared for and given to Prem Singh and Chris Salm of defendant on February 24, 1998.

70. Exhibit 73 is yet another substantially identical sales proposal given by Unitherm on March 3, 1998 to Holtz Smith and Ken Braswell of Cargill, Inc. I drafted this sales proposal following a business discussion I had with [Smith or Braswell] at Cargill. I drafted the quote to make a record of the business discussion. I regularly wrote such follow-up quotes to record the details of these sales discussions.
71. Exhibit 74 is an April 27, 1998 letter from me to Prem Singh and Chris Salm of defendant providing the names of two referrals, Plantation Foods and House of Raeford. These companies had purchased and were using the Unitherm browning/smoking system.
72. Exhibit 75 is a June 1, 1998 fax from me to Roy Cantu of defendant. I drafted this fax to follow-up prior business discussions I had with Cantu and other Swift-Eckrich employees. I drafted this fax to document these prior business discussions and I regularly wrote such follow-up correspondence.
73. Exhibit 76 is an August 20, 1998 fax which I sent to defendant's attorney Jeffrey Craft to remind him that Unitherm introduced an in-line smoking and browning system to the Defendant beginning in 1995. In the ordinary course of business, I regularly prepare and maintain correspondence regarding conflicts or disagreements with third parties.
74. In working with the cooked food product industry for 18 years and in working with over 50 companies from 1993 to the May 11, 1997 critical date of the '027 Patent concerning the Unitherm in-line browning/smoking process, it has been my experience that this industry is one of continuing innovation and that those in the art working to develop, implement, and evaluate processes of the type at issue are technically oriented people who are typically involved in production and/or research, and who are fully capable of understanding and

implementing the process at issue and that the efforts of companies in the industry evaluating and/or implementing the process at issue invariably involve senior R&D and/or production personnel.

75. Attached to Plaintiffs' Motion for Partial Summary Judgment Regarding Patent Invalidity and Unenforceability ("Motion") as Appendix V is a Unitherm video sent to Foster Farms. I was present when it was filmed for Unitherm and can and will testify that the video is an accurate reflection of the events that occurred during the time period. I was present at all of these filming sessions and testify that the video is an accurate reflection of the events that I witnessed.
76. Attached to Plaintiffs' Motion as Appendix K, Mikelberg, Ex. 3, is a letter dated October 9, 1995 I sent to Arnie Mikelberg and Ted Berry of Defendant. I drafted this letter immediately following a business discussion with Mikelberg. The purpose of the proposal was to make a record of this discussion which occurred on or about early October 1995. I regularly write such follow-up letters to record the details of these business discussions in an effort to close a sale.
77. Attached to Plaintiffs' Motion as Appendix J, Singh, Ex. 25, is a letter I sent to Singh on February 16, 1995 regarding the shipment of a RapidFlow oven. I drafted this letter immediately following a business discussion with Prem Singh. The purpose of the letter was to make a record of this discussion which occurred on or about February 16. I regularly write such follow-up letters to record the details of these business discussions.
78. Attached to Plaintiffs' Motion as Appendix J, Singh, Ex. 29 is a letter dated November 27, 1996 that I sent to Prem Singh and J.B. Weatherspoon regarding equipment display. I

drafted this letter to Singh and Weatherspoon to follow-up on prior business discussions with Singh [and/or Weatherspoon]. I regularly write such follow-up correspondence to record the details of these regular business discussions.

79. Attached to Plaintiffs' Motion as Appendix J, Singh, Ex. 27, is a sales quote I sent to Prim Singh on April 18, 1999. In the ordinary course of business, I drafted this letter to record the details of and to follow-up on a business discussion I had with Singh. I regularly write such letters to record and follow-up prior business discussions.
80. Attached to Plaintiffs' Motion as Appendix J, Singh, Ex. 26 is a letter James Gaydusek sent to Prem Singh on February 9, 1996 regarding product information. Gaydusek drafted this letter as follow-up to a business discussion Gaydusek had with Singh earlier that same day. A purpose of the letter was to make a record of this discussion. Gaydusek regularly writes such follow-up letters to record the details of his business discussions.
81. Attached to Plaintiffs' Motion as Appendix N, Briggs, Ex. 4 are Unitherm trial data sheets for trials conducted on September 12, 1996 and September 13, 1996. A. Cobb of Hudson recorded the trial data immediately following the demonstrations. I had personal knowledge of these trials because I was present at the trials.
82. Attached to Plaintiffs' Motion as Appendix N, Briggs, Ex. 3 WB 22-26 is a sales quote Unitherm sent to Andrew Cobb, Tony Muller, and Rick Bohonek of Hudson Foods. Jerry Adams and I drafted this quote for Hudson Foods to follow-up a prior business discussion. The purpose of the quote was to make a record of this discussion. Jerry Adams and I regularly wrote such follow-up quotes to record the details of his business discussions in an effort to close the sale.

83. Attached to Plaintiffs' Motion as Appendix N, Briggs, Ex. 3 WB 80-85 are Unitherm operating condition notes and test results. Dr. Phil Werner recorded the information included in these notes and test results immediately following the trials which occurred on February 24, 1997. Jim Wade, of Unitherm, and I have personal knowledge of these trials because we were present at the trials. The process and testing was identical to that described above and performed many times by Unitherm to prepare the trial data sheets.
84. Attached to Plaintiffs' Motion as Appendix Q, Wood, Ex. 3, is a letter I sent to Scott Christiansen of Jennie-O regarding tests conducted on product on or about October 9, 1996. In the ordinary course of business, I correspond with customers regarding product testing. I had personal knowledge of the test results referenced in this letter because I was present at the testing.
- The data sheets were developed to aid in the recording of demonstrations undertaken in the RapidFlow oven. The data sheet is customized to reflect the three zone RapidFlow oven in Elk Grove.
- There are typically at least two people present when a trial or test is being run. One person performs the manual work. The oven operator performs the data recording. For example, I would remove a whole muscle cooked turkey from its barrier bag and place it on the scale. Jim Hutchison would record the weight. The product would then be dipped in MAILLOSE. Jim would record the strength or mix ratio of the MAILLOSE. He would use the stop watch to record residence time and advise when 60 seconds was achieved. The product would then be placed on the infed to the oven. We would both re-confirm the set temperature to the actual temperature and record it. Residence time was validated by a stop watch to confirm

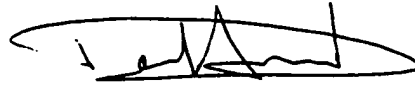
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Once the product exited the oven we would re-weigh the product to determine the weight loss. It was also our practice to record the start core temperature and exit core temperature. This was achieved by inserting a digital thermometer into the product.

It was the normal practice to run product prior to recording data to observe the results. Once the initial results were acceptable we would then begin running tests and recording the data to confirm the initial results. Typically three reptitions would be run.

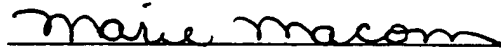
85. Attached to Plaintiffs' Motion as Exhibit Q, Wood, Ex. 7, is a letter and sales quote I sent to Bob Wood of Jennie-O on March 10, 1997. I drafted this letter immediately following a meeting I had with Wood on or about March 10, 1997. In the ordinary course of business, I regularly write such letters to record the details of my business meetings.

FURTHER, AFFIANT sayeth not.



DAVID HOWARD

Signed and sworn to before on this 28 day of June, 2002 by DAVID HOWARD.



Notary Public



MARIE MACOM
Oklahoma County
Notary Public in and for
State of Oklahoma

Commission # 99014874 Expires 9/15/03

(Seal)

My Commission Expires: